



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION

No. 2019-22

**Curtailing the Use of Solitary Confinement,
Guaranteeing Fair Visitation Rights to Inmates and Families,
and
Prohibiting Price-Gouging on
Inmate Telecom and Tech Options**

Reported to the Caucus by the NHCSL
Law and Criminal Justice Task Force
Del. Joseline Peña-Melnyk (MD), Chair

Sponsored by Sen. Nellie Pou (NJ)

Unanimously ratified by the Caucus on December 5, 2019

1 **I. The use of isolated confinement has become unmoored from its**
2 **legitimate use as a last-resort punishment or medical protection**

3

4 **WHEREAS**, isolated or solitary confinement is the confinement of an inmate in a
5 correctional facility, pursuant to disciplinary, administrative, protective,
6 investigative, medical, or other classification, in a cell or similarly confined holding or
7 living space, alone or with other inmates, for approximately 20 hours or more per day
8 with severely restricted activity, movement, and social interaction; and,

9

10 **WHEREAS**, many health professionals have questioned the effectiveness and
11 dangerous consequences of solitary confinement, and therefore have criticized the
12 use of solitary confinement for a number of reasons particularly when experts who

Curtailing Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

13 study the issue agree that U.S. prisons are turning to solitary confinement more
 14 frequently;¹ and,

15
 16 **WHEREAS**, according to the American Friends Service Committee (AFSC) it
 17 encourages inhumane practices such as confinement behind a solid steel door for 22
 18 to 24 hours a day, severely limited contact with other human beings, infrequent
 19 phone calls and rare non-contact family visits, extremely limited access to
 20 rehabilitative or educational programming, and grossly inadequate medical and
 21 mental health treatment;² and,

22
 23 **WHEREAS**, solitary confinement often causes depression and rage after a few days,
 24 and it tends to spark violence instead of lessening it, moreover it tends to increase the
 25 likelihood that a prisoner will commit another crime once they get out;³ and,

26
 27 **WHEREAS**, important factors in successful rehabilitation such as contact with family
 28 or visitors is often restricted or denied altogether;⁴ and,

29
 30 **WHEREAS**, “the adverse effects of solitary confinement are especially significant for
 31 persons with serious mental illness, commonly defined as a major mental disorder
 32 (e.g., schizophrenia, bipolar disorder, major depressive disorder) that is usually
 33 characterized by psychotic symptoms and/or significant functional
 34 impairments”;⁵and,

35
 36 **WHEREAS**, research has documented the detrimental psychological effects of long-
 37 term solitary confinement such as visual and auditory hallucinations,
 38 hypersensitivity to noise and touch, insomnia and paranoia, uncontrollable feelings
 39 of rage and fear, distortions of time and perception, increased risk of suicide,
 40 incremental risk of suicide and post-traumatic stress disorder (PTSD);⁶ and,

41

¹ See Kirsten Weir, Alone, in ‘the hole’, American Psychological Association, May 2012, Vol 43, No. 5. Available at <https://www.apa.org/monitor/2012/05/solitary>

² See Solitary confinement facts, American Friends Service Committee. September 9, 2019. Available at <https://www.afsc.org/resource/solitary-confinement-facts>. The American Friends Service Committee is a Quaker organization founded in 1917, that promotes lasting peace with justice, as a practical expression of faith in action.

³ See No name, “The Abuse of Solitary Confinement”, *The New York Times*, March 16, 2012, Available at <https://www.nytimes.com/2012/03/16/opinion/the-abuse-of-solitary-confinement.html>

⁴ See Solitary confinement, Penal Reform International. September 17, 2019. Available at <https://www.penalreform.org/priorities/prison-conditions/key-facts/solitary-confinement/>. Penal Reform International (PRI) is an independent non-governmental organization that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

⁵ See Guenther, Lisa. Solitary confinement: Social death and its afterlives. U of Minnesota Press, 2013.

⁶ Solitary confinement facts, American Friends Service Committee. September 9, 2019. Available at <https://www.afsc.org/resource/solitary-confinement-facts>.

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

42 **WHEREAS**, medical research shows that prolonged isolation can destroy a person’s
 43 personality and their mental health and its effects may last long after the end of the
 44 period of segregation;⁷ and

45
 46 **WHEREAS**, prisoners are put into solitary confinement for many reasons, from
 47 serious infractions, such as fighting with another inmate, to minor ones, like talking
 48 back to a guard or getting caught with a pack of cigarettes. Nevertheless, prisoners
 49 are often thrown into solitary confinement without breaking the rules at all;⁸ and,

50
 51 **WHEREAS**, prisoners are often confined for months or even years, with some
 52 spending as well as more than 25 years in segregated prison facilities. Furthermore,
 53 as with the general prison community, Blacks and Hispanics are disproportionately
 54 represented in isolation units;⁹ and,

55
 56 **WHEREAS**, despite evidence of the harm of solitary confinement, it continues to form
 57 a basic component of federal and state prison systems in the United States,
 58 particularly in supermax penitentiaries, where all prisoners are kept in twenty-three-
 59 hour-a-day lockdown with almost no human interaction;¹⁰ and,

60
 61 **WHEREAS**, prison and jail administrators at all levels have relied increasingly on
 62 isolation and segregation to control men, women, and even youth in their custody. In
 63 fact, more than 40 states have maximum-security facilities essentially designed to
 64 hold people in long-term isolation;¹¹ and,

65
 66 **WHEREAS**, nowadays there are more than 80,000 men, women, and children in
 67 solitary confinement in prison throughout the whole nation, according to the Bureau
 68 of Justice Statistics;¹² and, it is important to note that the figure previously mentioned
 69 is a decade old and does not include the whole range of imprisonment settings such
 70 as jails, juvenile facilities, and immigrant centers. Virtually every state utilizes some
 71 form of solitary confinement, however there is no federal reporting system that
 72 tracks how many people are isolated at any given time;¹³ and,

73

⁷ Solitary confinement, Penal Reform International. September 17, 2019. Available at <https://www.penalreform.org/priorities/prison-conditions/key-facts/solitary-confinement/>. Penal Reform International (PRI) is an independent non-governmental organization that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

⁸ Solitary confinement facts, American Friends Service Committee. September 9, 2019. Available at <https://www.afsc.org/resource/solitary-confinement-facts>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Solitary confinement facts, American Friends Service Committee. September 9, 2019. Available at <https://www.afsc.org/resource/solitary-confinement-facts>.

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

74 **WHEREAS**, people of color are overrepresented in solitary confinement in
 75 comparison to the general prison population, and according to a 2015 survey on the
 76 use of solitary confinement in 48 jurisdictions. Overall, black male prisoners made up
 77 40 percent of the total prison population in the 43 jurisdictions polled that provided
 78 details on race, also in 31 of the 43, the percentage of black males who spent time in
 79 solitary confinement was greater than their slice of the general population;¹⁴ and,
 80

81 **WHEREAS**, Latinos were also disproportionately represented in solitary confinement
 82 in at least 22 of the 43 jurisdictions in relation to their general population numbers.
 83 In contrast, “figures for white inmates were largely inverse, with 36 of the 43
 84 jurisdictions reporting that whites were underrepresented in solitary”
 85 confinement;¹⁵ and,
 86

87 **WHEREAS**, the widespread use of solitary confinement for immigrant detainees in
 88 U.S. Immigration and Customs Enforcement (ICE) custody has been widely reported;
 89 meanwhile, newly obtained information has shed light on how many detainees are
 90 forced into extended periods of isolation for reasons that have nothing to do with
 91 violating any rules, but rather the person’s disability, sexual orientation or gender
 92 identity;¹⁶ and,
 93

94 **WHEREAS**, the UN Special Rapporteur on Violence Against Women, and the UN
 95 Committee on Torture have both denounced that United States prison conditions
 96 violate the applicable international standards which state that:

- 97 a. each state party shall take effective legislative, administrative, judicial, or
 98 other measures to prevent acts of torture in any territory under its
 99 jurisdiction;
- 100 b. no exceptional circumstances whatsoever, whether a state of war or a
 101 threat of war, internal political instability or any other public emergency,
 102 may be invoked as a justification of torture.¹⁷
 103

¹⁴ Juleyka Lantigua-Williams, “The Link Between Race and Solitary Confinement”, *The Atlantic*, December 5, 2016. Available at <https://www.theatlantic.com/politics/archive/2016/12/race-solitary-confinement/509456/>

¹⁵ Ibid.

¹⁶ Rappleye, H., Lehren, A., Woodman, S., Swales, V. and Saleh, M., “Thousands of immigrants suffer in solitary confinement in U.S. detention centers”, *CBC News*, May 21, 2019. Available at <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>

¹⁷ American Friends Service Committee. *Inalienable Rights: Applying international human rights standards to the U.S. criminal justice system*. 2009. Page 14.

Curtailing Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

104 **II. Restrictions to family and other visitation rights have increasingly**
 105 **become commonly petty and casually cruel**

106
 107 **WHEREAS**, inmate visits are a right and a need of both inmates and their visitors,
 108 particularly family members; and,

109
 110 **WHEREAS**, inmate visits benefit the community at large because strong ties increase
 111 a prisoner’s success after release; and,

112
 113 **WHEREAS**, a recent report¹⁸ concludes that, after visiting many prisons in several
 114 states, “the rules [regarding visits] are always changing, always arbitrary; [w]hat is
 115 consistent is the casual cruelty; the indifference; the way some seem to relish denying
 116 visits for any reason they can;” and,

117
 118 **WHEREAS**, undue restrictions to visitations can harm both the visitors and the
 119 inmates fracture families and undermine the rehabilitative purpose of correctional
 120 facilities;¹⁹ and,

121
 122 **WHEREAS**, rule enforcement and interpretation can be or seem arbitrary, visitors are
 123 sometimes not allowed cure easily addressable issues and reattempt entry;²⁰ and,

124
 125 **WHEREAS**, in fact, visitors are often extraordinarily punished themselves for petty
 126 deviations from the rules;²¹ and,

127
 128 **WHEREAS**, on too many occasions inmates have no prior notice of a restriction on
 129 visits, they may find out after the attempted visit that it was denied and sometimes
 130 neither visitors nor the inmates know of a good reason for the denial;²² and,

131
 132 **WHEREAS**, states vary widely in the number and duration of visits they allow with
 133 many providing “a floor for the minimum number of days or hours visitation must be
 134 made available”, including on weekends and holidays, and no restriction on the length
 135 of visits during the facility’s established visitation periods,²³ others mandate a ceiling
 136 for visitation hours,²⁴ and one, North Carolina, mandates both;²⁵ and,

137

¹⁸ Liliana Segura, Twitter report on experiences as a visitor in prisons across the country (Nov 2019),
<https://threadreaderapp.com/thread/1196198439685672961.html>

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid. (listing Alaska, Arkansas, California, Connecticut, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming).

²⁴ Ibid. (listing Oregon and Utah).

²⁵ Ibid.

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

138 **WHEREAS**, as of 2013 the most welcoming maximum security prison visitation
 139 policy, New York’s, mandated “up to six hours of visits 365 days a year *and* overnight
 140 visits approximately every two months” and, the most restrictive, North Carolina’s,
 141 established a “ceiling of no more than one visit per week up to two hours (excluding
 142 legal and clerical visits);”²⁶ and,
 143

144 **WHEREAS**, some jails and prisons are replacing in-person visits with remote video
 145 calls or on-site video visitation system, both of substandard quality, and, in some
 146 cases, requiring a fee for them;²⁷ and,
 147

148 **WHEREAS**, many locations forbid visits by individuals with criminal records, which,
 149 “in communities and social groups where having a criminal record may be common...
 150 circumscribes the number of potential visitors;” in contrast, Hawaii, Massachusetts,
 151 Vermont and the Federal Government allow former felons to visit inmates absent
 152 other aggravating circumstances;²⁸ and,
 153

154 **WHEREAS**, some states, like California, do not limit the number of approved visitors,
 155 while others allow visitors only from a list that can be as short as two persons plus
 156 family (with many limiting edits to the list), with many states forbidding a person to
 157 be on more than one inmate’s list, regardless of how many family or community
 158 members are incarcerated;²⁹ and,
 159

160 **WHEREAS**, states differ in whether they allow the same visitation rights to higher-
 161 security inmates, with the State of Georgia explicitly providing for the same level of
 162 rights unless, for reasons of violence or similar, this is not feasible;³⁰ and,
 163

164 **WHEREAS**, over a million prisoners have minor children and a “relationship with
 165 one’s children may be the most meaningful or important connection a prisoner has to
 166 the world outside the walls” but the prison environment can be challenging for a
 167 child; therefore, “some states, like Washington, provide for child-friendly visiting
 168 rooms, including toys, games, and rule enforcement sensitive to children” and several
 169 “have women’s prisons that run nursery programs for incarcerated mothers”
 170 allowing “mothers who are incarcerated during childbirth to keep newborns with
 171 them inside the facility;”³¹
 172

²⁶ Ibid.

²⁷ Timothy Lee, NOFACETIME — Jails are replacing visits with video calls—inmates and families hate it (Ars Technica, May 14 2018), <https://arstechnica.com/tech-policy/2018/05/jails-are-replacing-in-person-visits-with-video-calling-services-theyre-awful/>; and see Shannon Sims, *The end of American prison visits: jails end face-to-face contact – and families suffer* (The Guardian, Dec 9 2017) <https://www.theguardian.com/us-news/2017/dec/09/skype-for-jailed-video-calls-prisons-replace-in-person-visits>

²⁸ Chesa Boudin, Prison Visitation Policies: A Fifty-State Survey, Yale L. & Policy Rev., 165 (2013), https://law.yale.edu/sites/default/files/area/center/liman/document/prison_visitation_policies.pdf

²⁹ Ibid. p 164.

³⁰ Ibid. p. 162.

³¹ Ibid. p 168-69.

Curtailing Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

173 **III. Price gouging and rights violations related to telecommunications**
 174 **options has become common**
 175

176 **WHEREAS**, like visitations, inmate telecommunications with families can help reduce
 177 recidivism and, therefore, taxpayer dollars;³² and,
 178

179 **WHEREAS**, for years, two prison phone companies “have exerted effective monopoly
 180 power in many states to charge inmates, families, lawyers, and clergy excessive rates
 181 that can result in monthly bills of as much as \$500. For a struggling family whose
 182 former breadwinner may be locked up, that’s a lot of money just to stay in touch with
 183 a loved one;”³³ and,
 184

185 **WHEREAS**, according to the Federal Communications Commission, “in most cases,
 186 inmates’ telephone calling options are limited to one or more of the following calling
 187 types: collect, debit account or pre-paid account; [and] incarcerated persons typically
 188 cannot choose their calling provider. These factors, combined with unrestricted rates,
 189 have often resulted in unreasonably high phone bills for inmates’ families;”³⁴ and,
 190

191 **WHEREAS**, some companies providing services for inmate calling impose “dozens of
 192 fees for calls and basic services, including establishing, maintaining and closing an
 193 account;”³⁵ and,
 194

195 **WHEREAS**, the FCC attempted to pass orders capping phone call rates in 2013, 2015
 196 and 2016, settling in the latest one at 13 cents/minute for the least expensive option
 197 (debit or prepaid calls from state or federal prisons) and a top rate of 31 cents/minute
 198 for the most expensive option (debit or prepaid calls from non-state or federal jails
 199 with fewer than 350 inmates), for both interstate and intrastate calls,³⁶ but, after the
 200 FCC refused to continue defending its own rules in 2017,³⁷ the DC Circuit declared
 201 that the latest couple of orders exceeded the FCC’s authority,³⁸ which means that the

³² Alex Friedmann, *Lowering Recidivism through Family Communication* (Prison Legal News, Apr 15, 2014) <https://www.prisonlegalnews.org/news/2014/apr/15/lowering-recidivism-through-family-communication/>

³³ San Gustin, *A new bill could finally ban predatory inmate phone costs* (The Verge, Mar 13 2018), <https://www.theverge.com/2018/3/13/17113712/prison-phone-call-bill-reform-senate>

³⁴ FCC, *Inmate Telephone Service*, <https://www.fcc.gov/consumers/guides/inmate-telephone-service>

³⁵ Timothy Williams, *The High Cost of Calling the Imprisoned* (New York Times, Mar 31, 2015) <https://www.nytimes.com/2015/03/31/us/steep-costs-of-inmate-phone-calls-are-under-scrutiny.html>

³⁶ FCC, *FCC ADOPTS SUSTAINABLE, AFFORDABLE INMATE CALLING RATES* (Aug 4 2016), <https://docs.fcc.gov/public/attachments/DOC-340632A1.docx>. (Rates for collect calls were “slightly higher in the first year” and were meant to be “phased down to these caps after a two-year transition period” which would have ended in December 2018).

³⁷ San Gustin, *Trump’s FCC Refused to Fight For Lower Prison Phone Rates. Now, Inmates Will Pay* (Motherboard Tech by Vice, Jun 14, 2017), https://www.vice.com/en_us/article/43y7eq/trumps-fcc-refused-to-fight-for-lower-prison-phone-rates-now-inmates-will-pay

³⁸ *A new bill, supra*, n 23.

Curtailing Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

202 much higher 2013 interim rate caps, which “apply only to interstate long-distance
 203 calls, not in-state long distance or local calls,”³⁹ remain in effect; and,

204

205 **WHEREAS**, given the prevalence of unlimited nationwide calling packages and
 206 reliable worldwide voice over IP and internet video calling at affordable fixed
 207 monthly rates for unlimited access, even the rates proposed by the FCC in 2016 seem
 208 unacceptably high; and,

209

210 **WHEREAS**, bipartisan legislation to address this issue, like S. 2520, the Inmate Calling
 211 Technical Corrections Act of 2018, has not advanced in Congress;⁴⁰ and,

212

213 **WHEREAS**, the Commonwealth of Massachusetts is currently evaluating a bill to
 214 eliminate all charges for inmate phone calls;⁴¹ and,

215

216 **WHEREAS**, US prisons and jails have begun using AI to mass-monitor millions of
 217 inmate calls;⁴² and,

218

219 **WHEREAS**, some of those monitored or recorded calls include the calls of pretrial
 220 inmates in jails, placing those defendants at a disadvantage when compared to those
 221 who, through bail or otherwise, are not incarcerated;⁴³ and,

222

223 **WHEREAS**, a hack of recorded inmate calls earlier in this decade published for
 224 download recordings of “more than 70 million records of individual phone calls”
 225 including “prisoners’ first and last names; the phone numbers they called; the date,
 226 time, and duration of the calls” and other information;⁴⁴ and,

227

228 **WHEREAS**, the hack revealed that Securus Technologies had improperly and
 229 knowingly recorded at least 14,000 phone calls to 800 different landlines that clearly
 230 belonged to attorneys, constituting a massive breach of attorney-client privilege;⁴⁵
 231 and,

232

³⁹ *Inmate Telephone Service*, *supra*, n. 23. (Those 2013 rates still in effect are 21 cents a minute for debit/prepaid calls, and 25 cents a minute for collect calls.)

⁴⁰ Sponsored by Senators Tammy Duckworth, Cory Booker, Brian Schatz, Rob Portman, Ed Markey and Angus King.

⁴¹ MA S.1372: An Act Relative To Inmate Telephone Calls.

<https://malegislature.gov/Bills/191/S1372>

⁴² Chris Francescani, *US prisons and jails using AI to mass-monitor millions of inmate calls* (ABC News, Oct 24 2019), <https://abcnews.go.com/Technology/us-prisons-jails-ai-mass-monitor-millions-inmate/story?id=66370244>

⁴³ *Ibid.*

⁴⁴ Jordan Smith and Micah Lee, *NOT SO SECURUS, Massive Hack of 70 Million Prisoner Phone Calls Indicates Violations of Attorney-Client Privilege* (The Intercept, Nov 11, 2015), <https://theintercept.com/2015/11/11/securus-hack-prison-phone-company-exposes-thousands-of-calls-lawyers-and-clients/>

⁴⁵ *Ibid.*

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

233 **WHEREAS**, the hack also revealed that the same company had endangered the lives
 234 of several inmates cooperating with authorities by recording 75 calls from inmates to
 235 a United States attorney’s office;⁴⁶ and,

236
 237 **WHEREAS**, a new trend has developed whereby inmates are charged to read
 238 electronic books and donations of hard copies are forbidden, this limits educational
 239 opportunities for inmates and likely increases recidivism and misbehavior.⁴⁷

240
 241 **IV. Conclusions**

242
 243 **THEREFORE, BE IT RESOLVED**, that the National Hispanic Caucus of State
 244 Legislators calls on the United States Congress and state legislatures, corrections
 245 departments and localities to strengthen or enact stringent restrictions on the use of
 246 isolated or solitary confinement in immigration, correctional and other detention
 247 facilities, taking into account that, in the case of the criminal justice system, it tends
 248 to undermine the goal of rehabilitation which should be the primary aim of a
 249 correctional system; and,

250
 251 **BE IT FUTHER RESOLVED**, specifically, the National Hispanic Caucus of State
 252 Legislators calls for the enactment of the following minimum restrictions⁴⁸ regarding
 253 the use of isolated or solitary confinement:

- 254 a. an inmate shall not be placed in isolated confinement unless there is
 255 reasonable cause to believe that the inmate or others would be at
 256 substantial risk of immediate, serious harm as evidenced by recent threats
 257 or conduct, and any less restrictive intervention would be insufficient to
 258 reduce that risk; and
- 259 b. an inmate shall not be placed in isolated confinement based on the inmate’s
 260 race, creed, color, national origin, nationality, ancestry, age, marital status,
 261 domestic partnership or civil union status, affectional or sexual
 262 orientation, genetic information, pregnancy or breastfeeding status, sex,
 263 gender identity or expression, disability or atypical hereditary cellular or
 264 blood trait; and,
- 265 c. an inmate shall not be placed in solitary confinement as a coercive,
 266 extortive or investigative technique or for any other non-disciplinary
 267 reason; and,
- 268 d. the correctional facility shall be responsible for establishing the
 269 justification for isolated confinement by clear and convincing evidence;
 270 and,

⁴⁶ Ibid.

⁴⁷ <https://reason.com/2019/11/22/west-virginia-inmates-will-be-charged-by-the-minute-to-read-e-books-on-tablets/>

⁴⁸ Based on NJ S.3261 (2018-2019) introduced by the sponsor of this resolution. See <https://legiscan.com/NJ/text/S3261/id/1828804>

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

- 271 e. except in cases involving medical isolation, the final decision to place an
- 272 inmate in isolated confinement is to be made by the facility administrator;
- 273 and,
- 274 f. an inmate shall not be placed in isolated confinement or in any other cell
- 275 or holding or living space with one or more inmates if there is reasonable
- 276 cause to believe that it could potentially be a dangerous space for the
- 277 inmate for reasons such as harassment, intimidation, extortion or any
- 278 physical or emotional abuse; and,
- 279 g. no inmate is to be placed in isolated confinement for more than 15
- 280 consecutive days, or for more than 20 days during any 60-day period; and,
- 281 h. exceptions to the restrictions on isolated confinement may be made for
- 282 facility-wide lock downs, emergency confinement, medical isolation, and
- 283 protective custody, but these should be rare; and,
- 284

285 **BE IT FURTHER RESOLVED**, the National Hispanic Caucus of State Legislators also
 286 calls for the enactment of the following minimum guarantees⁴⁹ regarding the use of
 287 isolated or solitary confinement:

- 288 a. an inmate cannot be denied access to necessities such as water or food nor
- 289 to appropriate medical care; and,
- 290 b. cells or other holding or living spaces used for isolated confinement are to
- 291 be properly ventilated, lit, temperature-controlled, clean, and equipped
- 292 with properly functioning sanitary fixtures; and,
- 293 c. an inmate shall receive timely, fair, and meaningful opportunities to
- 294 contest the isolated confinement, including the right to an initial hearing
- 295 within 72 hours of placement and reviews every 15 days thereafter, in the
- 296 absence of exceptional circumstances, unavoidable delays, or reasonable
- 297 postponements; the right to appear at the hearing; the right to be
- 298 represented at the hearing; an independent hearing officer; and a written
- 299 statement of reasons for the decision made at the hearing; and,
- 300 d. inmates in non-local correctional facilities or in any facility capable of
- 301 doing so shall receive a personal and comprehensive medical and mental
- 302 health examination, conducted by a clinician, before being placed in
- 303 isolated confinement; and inmates in local or county correctional facilities
- 304 not capable of providing the prior clinician examination, a preliminary
- 305 examination is to be conducted by a member of the medical staff within 12
- 306 hours of confinement and the clinical examination is to be conducted
- 307 within 48 hours of confinement; and,
- 308 e. except as explained below, an inmate determined to be a member of a
- 309 vulnerable population is to be immediately removed from isolated
- 310 confinement to an appropriate placement; ‘vulnerable population’
- 311 includes those 21 years of age or younger; 65 years of age or older; those
- 312 with a disability based on a mental illness, a history of psychiatric
- 313 hospitalization, or having recently exhibited conduct, including but not
- 314 limited to serious self-mutilation, indicating the need for further

⁴⁹ Ibid.

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

315 observation or evaluation to determine the presence of mental illness;
 316 those having a developmental disability; those having a serious medical
 317 condition which cannot effectively be treated in isolated confinement;
 318 those who are pregnant or lactating; those in the postpartum period, or
 319 those who have recently suffered a miscarriage or terminated a pregnancy;
 320 those who have a significant auditory or visual impairment; or those
 321 perceived to be lesbian, gay, bisexual, transgender, or intersex. To that end,
 322 1. an inmate who is a member of a vulnerable population because the
 323 inmate is 21 years of age or younger, has a disability based on
 324 mental illness, or has a developmental disability shall not be subject
 325 to discipline for refusing treatment or medication, or for self-
 326 harming or related conduct or threats of this conduct; and, if they
 327 would otherwise be placed in isolated confinement, they shall be
 328 screened by a correctional facility clinician or the appropriate
 329 screening service and, if found to meet the standards of civil
 330 commitment, shall be placed in a specialized unit, or civilly
 331 committed to the least restrictive appropriate short term care or
 332 psychiatric facility;
 333 2. an inmate who is a member of a vulnerable population because the
 334 inmate is 65 years of age or older, has a serious medical condition
 335 which cannot be effectively treated in isolated confinement, or is
 336 pregnant, is lactating, is in the postpartum period, or has recently
 337 suffered a miscarriage or terminated a pregnancy, who would
 338 otherwise be placed in isolated confinement, shall alternately be
 339 placed in an appropriate medical or other unit; and,
 340 f. all guarantees and restrictions shall be continuing and inmates whose
 341 isolation fails to meet all criteria shall be removed from isolation
 342 immediately; and,
 343

344 **BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators
 345 calls on the United States Congress and state legislatures, corrections departments
 346 and localities to strengthen or enact stringent restrictions on the use of limitations to
 347 visitation rights of inmates with family members and others as a tool by prison
 348 officials; and,
 349

350 **BE IT FURTHER RESOLVED**, specifically, the National Hispanic Caucus of State
 351 Legislators also calls for the enactment of the following minimum guidelines on the
 352 visitation and contact rights:

353 a. while facilities are encouraged to provide free or low-cost
 354 telecommunications options for inmates, no facility shall fully or
 355 substantively replace the right to in-person visits with a
 356 telecommunications-based alternative, be it remote or on-site; ‘substantial
 357 replacement’ means any curtailment of physical visits for more than 15
 358 days which intends to count telecommunications- or video-based
 359 conversation as if it were a visit within that timeframe; and,

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

- 360 b. except as stated below and in addition to any video-based or other
361 telecommunications they may have a right or access to, no inmate shall be
362 denied any in person, physical, visit due to any conduct beyond the
363 inmate’s control; and,
- 364 c. unless exigent circumstances, described in writing, make it unfeasible,
365 visits shall allow physical contact; and,
- 366 d. facilities shall provide at least six hours a day for visits with more hours on
367 holidays and no time limitation on the length of a visit except when
368 reasonably needed to allow visits for other inmates, with special attention
369 paid in those cases to the distance the visitor traveled; and,
- 370 e. facilities shall endeavor to make overnight visits available; and,
- 371 f. an inmate shall not be denied visitation rights as a coercive, extortive or
372 investigative technique or for any other non-disciplinary reason; and,
- 373 g. inmates in more restrictive or higher-security custody shall have the same
374 visitation rights, in general as other inmates unless there are documented
375 violence reasons that make this unfeasible; and,
- 376 h. since visitation also affects the visitors, inmates shall not be denied visits
377 if a lesser restriction would suffice as punishment for the disciplinary
378 violation; and,
- 379 i. facilities shall provide child-friendly visiting rooms, including toys, games,
380 and enforcement the rules in a manner sensitive to children’s needs and
381 typical conduct; and,
- 382 j. women inmates incarcerated close to childbirth shall be housed in facilities
383 that provide nurseries and are close to their communities so that they can
384 care for their children in the prison for a reasonable time; and,
- 385 k. restrictions on the items that visitors may carry on their persons may not
386 be arbitrary and must bear a reasonable, not remote, relation to the
387 security of the inmates and the institution; and,
- 388 l. a list of the forbidden items or conduct, which must include the reasons for
389 the prohibition, must be made public and emailed or provided to anyone
390 upon request; the list may not be changed more than once every thirty days
391 and new prohibitions cannot enter into effect immediately and must made
392 public prior to a reasonable waiting period before their effective date; all
393 persons shall have the right to question the list in both the administrative
394 agency and a court with jurisdiction; and,
- 395 m. visitors shall not be presumed to be attempting to break the rules, and no
396 visitor shall be denied the right to visit an inmate for any reason that is
397 cured by the visitor after being given reasonable opportunity to do so; and,
- 398 n. absent other aggravating circumstances, persons with criminal records
399 shall be allowed to visit inmates; and,
- 400 o. visitors to an inmate shall not be limited to persons on a list, although pre-
401 listed visitors may be granted speedier access; and,
- 402 p. visitors shall not be denied visitations for more than the current visit
403 absent court order which may only impose restrictions that are reasonably
404 proportional to the violation found; and,

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

- 405 q. neither inmates nor visitors shall be denied visitation rights on the basis of
- 406 sex, affectional or sexual orientation, gender identity, gender expression,
- 407 marital status, domestic partnership or civil union, race, creed, color,
- 408 ethnicity, national origin, disability, genetic information, atypical
- 409 hereditary cellular or blood trait, nor any other social category; and,
- 410 r. exceptions to the presumption of a right to visits may be made for facility-
- 411 wide lock downs, emergency confinement, medical reasons, and protective
- 412 custody, but these should be rare; and,
- 413 s. the correctional facility shall be responsible for establishing the
- 414 justification for the limits on visitation rights by clear and convincing
- 415 evidence; and,
- 416 t. in all cases, even the exceptions, both inmates, the inmates' immediate
- 417 family members and legal counsel and any other regular visitors, as well as
- 418 any visitor for the inmate, shall be informed of the reasons for any limit to
- 419 visitations as soon as practicable and they shall be also informed of any
- 420 lifting of restrictions with the same speed; and,
- 421 u. an inmate my limit the notice given to others regarding the inmate's
- 422 visitation rights but, in order to prevent coercive renunciation of rights, the
- 423 inmate may only do so at a time when the inmate is not under threat of any
- 424 punishment, and has not been punished for any reason, except for the
- 425 incarceration itself, in the preceding three months, and using a process
- 426 which guarantees the inmate is ably and freely renouncing his rights and
- 427 in which the institution's guards and other direct administrators are not
- 428 involved; and,
- 429 v. an inmate shall receive timely, fair, and meaningful opportunities to
- 430 contest the limits on visitations, including the right to an initial hearing
- 431 within 72 hours of placement and reviews every 15 days thereafter, in the
- 432 absence of exceptional circumstances, unavoidable delays, or reasonable
- 433 postponements; the right to appear at the hearing; the right to be
- 434 represented at the hearing; an independent hearing officer; and a written
- 435 statement of reasons for the decision made at the hearing; and,
- 436

437 **BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators
 438 calls on the United States Congress and state legislatures, corrections departments
 439 and localities to strengthen or enact stringent limits on the rates that inmates can be
 440 charged for telecommunications; and,

441
 442 **BE IT FURTHER RESOLVED**, specifically, the National Hispanic Caucus of State
 443 Legislators also calls for the enactment of the following minimum guidelines on the
 444 telecommunications rights of inmates:

- 445 a. phone calls, both incoming and outgoing, should be free of cost for the
- 446 inmate and any other party in the call; and,
- 447 b. no account-related fees shall be imposed; and,
- 448 c. facilities should also endeavor in good faith to provide other free or low-
- 449 cost telecommunications options for inmates, including video calling of
- 450 comparable quality to that available to the general public; 'low-cost' means

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

- 451 the actual cost to the facility of providing the service which shall not exceed
 452 the market price of the service or of any substantially similar service for
 453 the general public, and, if it is a fixed cost to the facility for unlimited use,
 454 then that low fixed cost reasonably prorated to the inmate’s use; and,
 455 d. an inmate’s allowed telecommunications use must provide enough time
 456 for substantive, regular conversations; and,
 457 e. an inmate shall not be denied telecommunications rights as a coercive,
 458 extortive or investigative technique or for any other non-disciplinary or
 459 facility-wide reason; and,
 460 f. since telecommunications with inmates also affects the other parties to the
 461 call, inmates shall not be denied telecommunications if a lesser restriction
 462 would suffice as punishment for the disciplinary violation; and,
 463 g. the correctional facility shall be responsible for establishing the
 464 justification for the limits on visitation rights by clear and convincing
 465 evidence; and,
 466 h. no inmate shall be denied telecommunications with the outside for more
 467 than 30 days for any reason absent court order which includes findings
 468 that such communications are likely to produce danger in the facility or in
 469 the outside community, provided that those orders may not be effective for
 470 over two years and require renewal and encouraging that those orders be
 471 tailored to cover communications with specific individuals and not merely
 472 broad prohibitions; and,
 473 i. an inmate shall receive timely, fair, and meaningful opportunities to
 474 contest the limits on telecommunications, including the right to an initial
 475 hearing within 72 hours of placement and reviews every 10 days
 476 thereafter, in the absence of court order, exceptional circumstances,
 477 unavoidable delays, or reasonable postponements; the right to appear at
 478 the hearing; the right to be represented at the hearing; an independent
 479 hearing officer; and a written statement of reasons for the decision made
 480 at the hearing; and,
 481 j. except during facility-wide lockdowns, no inmate shall be denied
 482 telecommunications with their legal counsel at any time and such
 483 communications may not be monitored or recorded; and,
 484 k. the telecommunications of a pretrial inmate who has not been convicted
 485 may not be monitored or recorded absent court order applying the same
 486 guidelines applicable to non-inmates; and,
 487 l. if an inmate’s telecommunications are monitored or recorded, all parties
 488 to the communication must be effectively warned of such before every call
 489 that is so monitored or recorded; and,
 490

491 **BE IT FINALLY RESOLVED**, that the National Hispanic Caucus of State Legislators
 492 calls on the United States Congress and state legislatures, corrections departments
 493 and localities to increase and enhance inmate access to books and other educational
 494 opportunities, including electronic books and donated books in printed or electronic
 495 format, underscoring that those should be provided free of charge to inmates or their
 496 families (including free of processing charges), allowing for market price for special

Curtailling Solitary Confinement, Guaranteeing Visitation Rights and Prohibiting Price Gouging

497 personal orders of new books, and allowing a one-time charge for a personal e-reader
498 or tablet at an accessible price reasonably similar to the lowest outside cost of similar
499 devices.

500
501 THE NHCSL EXECUTIVE COMMITTEE UNANIMOUSLY AMENDED AND APPROVED
502 THIS RESOLUTION ON DECEMBER 3, 2019 AT ITS FALL MEETING IN SAN JUAN, PR.

503
504 THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY
505 RATIFIED THIS RESOLUTION ON DECEMBER 5, 2019, AT THE ANNUAL MEETING
506 IN SAN JUAN, PR.

